

Or like myself—they were lawyers. I usually speak of myself in that respect in the past tense. But they were put on that committee for that reason. Also they were recognized according to seniority, a consideration which is always given in these things.

There has never been any attempt to stack the committee and I am sure the gentleman would not intentionally make that as an accusation, but I think he did infer it.

MR. SMITH of Iowa: I did not intend to reflect upon any one section of the country. I just want to say, if any one section of this country has every member on an election subcommittee, it gives a general image that is not good, no matter what section of the country they are from.

MR. BURLESON: It may appear that way but the subcommittee and the full committee in handling these matters, during the 19 years that I have served in this capacity, have always tried to be as judicial and as analytical and objective in these matters as it is possible to be and as our capacities permit us to be. I have never seen a partisanship angle which I thought overcame or prejudiced an objective decision in these matters.

The House, by voice vote, agreed to House Resolution 602 and a motion to reconsider was laid on the table.⁽⁶⁾

Note: Syllabi for Peterson v Gross may be found herein at § 5.4 (qualifications of Members on Subcommittee on Elections); § 13.3 (alleged error insufficient to

change result); § 36.6 (official returns as presumptively correct); § 40.6 (burden of proving recount would change election result).

§ 62. Ninetieth Congress, 1967–68

§ 62.1 Lowe v. Thompson

The report (No. 365, submitted June 14, 1967) of the committee on elections in the case of Lowe v Thompson showed that Fletcher Thompson, the Republican nominee, was elected to the office of Representative from the Fifth Congressional District of Georgia in the general election held on November 8, 1966. The only names on the ballot were those of Mr. Thompson and his Democratic opponent, Archie Lindsey. His credentials having been presented to the Clerk of the House, Mr. Thompson appeared, took the oath of office, and was seated on January 10, 1967.

The contest of Mr. Thompson's election was initiated by Mr. Wyman C. Lowe by service upon the then Member-elect on December 12, 1966, of a notice of contest pursuant to the Federal contested election law, Revised Statutes, title II, chapter 8, section 105; title 2, United States Code, section 201, claiming that contestee's

16. *Id.* at p. 26504.

election was null and void and that his seat should be declared vacant because the manner in which the Democratic candidate, Archie Lindsey, had been nominated was contrary to the Georgia Election Code. Contestant charged that the Fulton County Democratic Executive Committee, which had substituted Lindsey for the primary election winner, Charles L. Weltner, upon Weltner's withdrawal, was without lawful authority to make such substitution since the Georgia Election Code and the state Democratic Party rules authorized a county committee to fill a vacancy in a party nomination only when the vacancy occurred after the nomination had been made by the state Democratic Party convention. Contestant argued that if the vacancy arose prior to the convention, it had to be filled by special primary election. Mr. Weltner's withdrawal had preceded the convention. It was contestant's conclusion that the general election was voided by the defective nomination of the Democratic candidate.

The committee on elections concluded that Mr. Lowe had no standing to bring an election contest under the federal contested election law, because contestant was not a candidate in the general

election. The committee noted that recent precedents involving contests brought against Members-elect by persons who were not candidates in the general election were to the effect that such persons lacked standing to bring such a contest.

The committee, however, agreed to consider the petition Mr. Lowe presented to the House of Representatives, praying for an investigation of the right of Representative Thompson to his seat. The committee noted the constitutional derivation of the power of the House to judge the election and qualifications of its Members, and stated that the House is not confined to deciding election contests brought under the statute:

[The House] may adjudicate the question of the right to a seat in any of the following cases:

(1) In the case of a contest between the contestee and the returned Member of the House instituted in accordance with the provisions of Law.

(2) In the case of a protest or memorial filed by an elector of the district concerned.

(3) In the case of the protest or memorial filed by any other person.

(4) On motion of a Member of the House (Contested election case of Richard S. Whaley, 63d, Cong., Cannon's Precedents of the House of Representatives, vol. 6, sec. 78, p. 111.)

After considering Mr. Lowe's petition, however, the committee

concluded that the petition should be denied:

The committee is unaware of any precedent for depriving a Member of his seat *solely on the basis of the irregularity of the nomination of his opponent* in the general election and, indeed, no such precedent is cited by petitioner either in his petition or in his brief filed in the contested election case. It should be borne in mind that this is not a case where fraud or irregularity in the *returned Member's nomination* is charged.

The committee report also stated:

Nor is the committee inclined in this case to ignore the State court's ruling against petitioner who filed suit against Archie Lindsey and certain election officials seeking to enjoin Lindsey's candidacy and to require the call of a special Democratic primary election. According to petitioner, the grounds of his lawsuit were those asserted here. The suit was dismissed by the trial court on demurrer on November 1, 1966. Where, as here, petitioner's case is built on technicalities of State law and party rules respecting the method of nominating party candidates, there being no charge of fraud or corrupt practices on the part of the party officials or the party's nominee, the committee believes that disposition of the case by a State court should be left undisturbed.

Subsequently, Mr. Robert T. Ashmore, of South Carolina, by direction of the Committee on House Administration, called up the following resolution as privileged on July 11, 1967:

Resolved, That the election contest of Wyman C. Lowe, contestant, against Fletcher Thompson, contestee, Fifth Congressional District of the State of Georgia, be dismissed, and that the petition (numbered 75) of Wyman C. Lowe relative to the general election on November 8, 1966, in the Fifth Congressional District of the State of Georgia be denied.

The reported privileged resolution, House Resolution 541, was agreed to by voice vote after debate.⁽⁷⁾

Note: Syllabi for *Lowe v Thompson* may be found herein at §7.6 (adoption of state court's views); §10.21 (illegal nominating procedure); and §17.5 (investigation initiated by petition). See also §19.1 (parties to contest).

§ 62.2 Mackay Blackburn

On July 11, 1967, Mr. Robert T. Ashmore, of South Carolina, at the direction of the Committee on House Administration, called up House Resolution 542,⁽¹⁸⁾ which had been recommended by the committee in its report, House Report No. 366, on the contested election of James A. Mackay against Benjamin B. Blackburn in the Fourth Congressional District of the State of Georgia in the 90th

17. 113 CONG. REC. 18290, 18291, 90th Cong. 1st Sess., July 11, 1967.

18. 113 CONG. REC. 18291, 90th Cong. 1st Sess.

Congress. At the swearing in of Members-elect to the 90th Congress on Jan. 10, 1967, the contestee had been asked to step aside. The House then proceeded to adopt a resolution authorizing the oath to be administered to the contestee and providing that the question of the final right of the contestee to the seat be referred to the Committee on House Administration.⁽¹⁹⁾

The issue involved the counting of so-called "overvotes" on punch card voting machines during the November 1966 election. Contestant alleged that the computers that tallied the votes erroneously failed to count about 7,000 votes, and that the procedures for duplicating defective ballots were improper. Election officials, acting in accordance with what they construed to be Georgia law, had programmed the computing machines that counted the ballots to reject those cards where a voter had punched a straight party ticket and then also punched out the scored block for the congressional candidate of the opposing party. While the contested election case was under consideration, a lawsuit was instituted in the Georgia courts concerning the interpretation of the Georgia statutes relat-

ing to the canvassing of punch card votes. The litigation was terminated on Mar. 30, 1967, by the Georgia Supreme Court's denial of a writ of certiorari to the Georgia Court of Appeals which, on Jan. 25, 1967, had held in favor of the interpretation by the election officials [*Blackburn v Hall* (1967), 115 Ga. App. 235, 154 S.E.2d 392].

On Apr. 13, 1967, contestant notified the House of the withdrawal of his notice of contest.

The Committee on House Administration issued a report on June 14, 1967 (H. Rept. No. 366), which provided that the contestee was the duly elected Representative from the Fourth Congressional District of Georgia and was entitled to his seat.

During debate, the fact was brought out that some difficulties had occurred in counting and handling the punch card ballots, and in the voters' use of them in the "automatic" voting machines. This was not, however, a crucial matter in the determination of the case. The contestee himself participated in the debate, although it was only to express gratitude to his colleagues for their consideration during the time of the election contest.

The House agreed on July 11, 1967, to House Resolution 542, which provided:⁽¹⁾

19. 113 CONG. REC. 27, 90th Cong. 1st Sess. [H. Res. 2].

1. 113 CONG. REC. 18291, 90th Cong. 1st Sess.

Resolved, That Benjamin B. Blackburn was duly elected as Representative from the Fourth Congressional District of the State of Georgia to the Ninetieth Congress and is entitled to his seat.

A motion to reconsider was laid on the table.⁽²⁾

§ 63. Ninety-first Congress, 1969–70

§ 63.1 Lowe v Thompson

On Apr. 23, 1969, Mr. Watkins M. Abbitt, of Virginia, submitted the unanimous report of the Committee on House Administration (H. Rept. No. 91–157) on House Resolution 364, dismissing the contested election case of Wyman C. Lowe v Fletcher Thompson from the Fifth Congressional District of Georgia. Mr. Thompson, the Republican nominee, was re-elected to the office of Representative from the district in the general election held on Nov. 5, 1968. His Democratic opponent was Charles L. Weltner. The result of the election was officially certified in accordance with the laws of Georgia. His credentials having been presented to the Clerk of the House, Mr. Thompson appeared, took the oath of office, and was seated on Jan. 3, 1969.⁽³⁾

2. *Id.* at p. 18292.

3. 115 CONG. REC. 15, 91st Cong. 1st Sess.

Regarding the election contest, the committee report states:

The contest of Mr. Thompson's election was initiated by Mr. Lowe, an unsuccessful candidate in the Democratic primary, by service upon the Member on December 18, 1968, of a notice of contest pursuant to the Federal contested election law, Revised Statute, title I, chapter 8, section 105; title 2, United States Code, section 201, claiming that contestee's election was null and void and that his seat should be declared vacant. The ground of the contest asserted in the notice of contest are then that the general election was invalid because the Democratic candidate, Mr. Weltner, had not been lawfully nominated or that there are such grounds as to raise grave doubts that he had been lawfully nominated. Mr. Weltner won the nomination from Mr. Lowe, his only opponent, in the Democratic primary election on September 11, 1968. Contestant claims that Mr. Weltner's victory in the primary election was the result of certain specified "malconduct, fraud, and/or irregularity" on the part of poll officers in 40 of the 155 precincts of the Fifth District. There is no allegation of wrongful conduct on Mr. Weltner's part or any attribution to him of the alleged misconduct of the poll officers. Nor is it contended that contestee engaged in any wrongful conduct in the general election. The sole basis for attacking contestee's election is the alleged invalidity of his Democratic opponent's nomination.

In submitting the committee report, Mr. Abbitt made the following remarks,⁽⁴⁾ which further summarize the election contest:

4. 115 CONG. REC. 10040, 10041, 91st Cong. 1st Sess., Apr. 23, 1969.